IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4650 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAVITABEN LAXMANBHAI BAROT & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR AR LAKHIA for Petitioner(s) : 1 - 2.
MR AY KOGJE AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/11/2006

ORAL JUDGMENT

1. The petitioners, being aggrieved by the order

dtd.31/3/1995 (Annexure-E) passed by the Secretary, Revenue Department (Appeals) are before this Court on many fold grounds submitting inter-alia; (i) that the powers under sec.211 of Bombay Land Revenue Code, 1879 ("the Code" for short) could not be exercised by the State Government after a long lapse of time (ii) that no notice was issued to the petitioner No1 who is a subsequent purchaser from the petitioner No.2.

2. The facts in nutshell are that the petitioner No.2 had purchased some land admeasuring 133.75 sq.mtrs. Wihtout obtaining any permission under sec.65 or sec.65(A) of the Code, he raised a Katcha construction and started residing in it and subsequent thereto, made an application under sec.65 of the Code to the Taluka Development Officer for conversion of the use of the land. It appears that to the extent of 33.34.52 sq.mtrs. where Katcha house was situated, permission was granted. It also appears that for rest of the 100 sq.mtrs of the land, the petitioner No.2 made yet another application seeking Non-Agricultural Permission, that also came to be granted in favour of the petitioner No.2 on 17/5/1994. On 30/5/1994 i.e. within a period of 13 days of the permission, the petitioner No.2 sold the entire area in favour of the petitioner No.1 and

Mutation Entry to that effect came to be made on 3/6/1994.

3. It appears that the matter was brought to the notice of the State Government, therefore, the Secretary (Appeals) proposed to exercise powers under sec.11 of the Code on 10/2/1995. He issued 21 days' Show Cause Notice to the petitioner No.2 and after receiving reply, decided the matter vide his order dtd.31/3/1995.

4. Placing reliance upon the Single Bench Judgment of this Court in the matter of Patel Chhotabhai Madhabhai & Anr. Vs. State of Gujarat, reported in 1995 (1) G.L.R. 407, learned counsel for the petitioners submits that in accordance with the judgment of the Supreme Court in the matter of State of Gujarat Vs. Patel Raghav Natha, reported in 1969 G.L.R. 992, no authority would be entitled to exercise the powers, if the same are not exercised diligently and within a shortwhile. He submits that such order should be passed in exercise of the revisional powers within few months and if such orders are passed with delay, then such orders cannot be approved. His further submission is that the Secretary issued the notice to the petitioner No.2 only but did not issue any notice to the petitioner No.1 who had acquired rights in the property in the

meanwhile. So far as the judgment in the matter of Patel Chhotabhai Madhabhai (supra) is concerned, it was on its own facts. The Supreme Court said that the powers should be exercised within a reasonable time limit and the reasonable time limit would be appreciated in view of the facts of each case. The High Court added to it that powers must be exercised within few months. What would be the meaning of words “few months” would again depend upon the facts of each case. In the present matter, permission was accorded on 17/5/1994, within 10 months of it, final order came to be passed. It is also to be seen that the notice to show cause was issued within 8 months of the order. True it is that the judgment in the matter of Patel Chhotabhai Mathabhai says that spade work to be done by the authority or officer would not be included in exercise of the revisional powers, but one cannot lose sight of the fact that before exercising the powers, one has to assume jurisdiction and such assumption can only be when the papers are presented before the authority and he decides to issue a notice. In the present case, papers must have been submitted before the authority prior to 10/2/1995 and in any case, the authority decided to exercise the powers, therefore, it issued the notice on 10/5/1995. By no stretch of imagination, it can be said that the powers were not exercised

within few months.

5. The judgment in the matter of Patel Chhotabhai Madhabhai (supra) also carved a distinction between “illegal” or “invalid order”, “ab-initio void order” or “order in nullity”. In the present matter, an application under sec.65 of the Code could not lie to the Taluka Development Officer after the construction was already raised. Sec.65 of the Code requires a holder to make an application before he converts the use of the land. Sec.66 of the Code provides that if any land referred to in sec.65 or sec.65(A) of the Code, is used for any purpose other than the purpose for which such land is assessed or held without the permission of the Collector being first obtained, or before the expiry of three months, referred to in sec.65 or despite refusal of permission during the said period of three months, then, without prejudice to the occupant's liability to pay new assessment leviable under sec.48 of the Code or the conversion tax leviable under sec.67(A), occupant may be summarily evicted, he may be also liable for fine for the period during which the said land has been so used. If the law gives a right to a person, it also cast a duty upon him. One cannot come to the court and say that though he committed an illegality but as some order was passed in his favour,

revisional authority should not have interfered in the matter. In the matter of Patel Chhotabhai Madhabhai (supra) the Court has observed that mere error of law or a mere non-performance of a duty by an officer acting under a particular statute would not render his orders void ab-initio. The said judgment does not say that an order passed by an authority who otherwise had no jurisdiction, would be taken to be an irregular order. The Code does not authorise the Taluka Development Officer to grant post facto sanction or validate an illegal act. Under the circumstances, it cannot be said that the order was irregular or was passed in illegal exercise of jurisdiction, the order was bad, on law and was also in the teeth of law. So far as notice to the petitioner No.1 is concerned, the question was never raised by the petitioner No.2 who appeared before the authority. It is nobody's case that the mutation order was brought to the notice of the revisinal authority. In fact, the revisional authority had focused its attention to the orders dtd.5/11/1993 and 17/5/1994. If the petitioner No.2 after receiving the notice, did not inform the authority that he has already sold the property, then the petitioner No.2 cannot be allowed to take advantage of his own wrong. The petitioner No.1 who happens to be in possession of the property after purchasing the same, if did

not appear before the Secretary in response to the notice served upon the erstwhile owner, then also he cannot make out a capital out of the issue of no notice.

6. Even otherwise, it is to be seen that the order dtd.17/5/1994 was made in favour of the petitioner No.2 and his rights only were to be adversely affected by recall of the said order.

7. I find no reason to interfere. The petition deserves to and is accordingly dismissed. No costs.

(R.S. GARG, J.)

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